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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

PERMITTING AND ENFORCEMENT COMMITTEE

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 3, 2004

10:00 A.M.

JAMES F. PETERS, CSR, RPR  
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Roalie Mulé, Chairperson

Mr. Michael Paparian

STAFF

Ms. Julie Nauman, Chief Deputy Director

Ms. Marie Carter, Chief Counsel

Mr. Howard Levenson, Deputy Director

Ms. Sharon Anderson, Branch Manager, LEA Support Services

Ms. Jeannine Bakulich, Executive Secretary

Mr. Mark de Bie, Branch Manager, Permitting and Inspection  
Branch

ALSO PRESENT

Mr. Sean Edgar, California Refuse Removal Council

Mr. Scott Smithline, Californians Against Waste

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 CHAIRPERSON MULÉ: I would like to call to order  
3 the November 4th meeting of the Permitting and Enforcement  
4 Committee.

5 There are agenda items -- or agendas on the back  
6 of the table. If anyone would like to speak on an item,  
7 there are speaker slips in the back of the room to fill  
8 out. Please bring them to Jeannine, and you will have an  
9 opportunity to address our committee.

10 And if I could remind you all to please turn off  
11 your cell phones and pagers so that we can move the  
12 meeting along and not be interrupted.

13 And, Jeannine, would you please call the roll.

14 Thank you.

15 SECRETARY BAKULICH: Marin?

16 Paparian?

17 COMMITTEE MEMBER PAPARIAN: Here.

18 SECRETARY BAKULICH: Mulé?

19 COMMITTEE MEMBER MULÉ: Here.

20 And are there any ex partes?

21 COMMITTEE MEMBER PAPARIAN: I'm up to date.

22 CHAIRPERSON MULÉ: Up to date. Very good.

23 And as am I. I'm up to date.

24 Okay. So Deputy Director's Report.

25 Mr. Levenson, if you would please.

1 Thank you.

2 DEPUTY DIRECTOR LEVENSON: Sure.

3 Good morning, Madam Chair, Mr. Paparian. Howard  
4 Levenson, the Permitting and Enforcement Division.

5 Just have a couple of things I'd like to bring to  
6 your attention as part of the Deputy Director's report.

7 First of all, regarding La Montana, the recycling  
8 system site. As I think most people are aware, on October  
9 13th the Court granted approval of our plans to access and  
10 clean up the site. And tomorrow night at 6 o'clock in  
11 Huntington Park we have a community meeting to lay out the  
12 project schedule and discuss the community health and  
13 safety plan with concerned citizens. And we expect the  
14 actual trucks to start rolling around the 15th or so of  
15 that week, and for the project to take about 12 weeks to  
16 complete.

17 So finally we are on our way to cleaning up La  
18 Montana.

19 CHAIRPERSON MULÉ: Very good.

20 DEPUTY DIRECTOR LEVENSON: Also wanted to let you  
21 know that last month we had an item on the inventory of  
22 solid waste facilities that violate minimum standards.  
23 And there was a discussion by the Committee about making  
24 that more on line and on time. And we anticipate on-time  
25 publication of that occurring in the next two to three

1 months. We're working with our Information Management  
2 Branch to do that.

3 There'll also be other enforcement-related  
4 information that's put on the website over time.

5 And, lastly, I just wanted to mention upcoming  
6 items for December, which will be a very busy month for  
7 the Committee. At a minimum we have two hearings --  
8 public hearings on rule-making packages. One is on the  
9 RD&D rule and the other is on the conversion technology  
10 regulations. Those will just be hearings to hear public  
11 comment, and then we'll return to the Committee  
12 subsequently for further action.

13 We also will have a workshop in the afternoon.  
14 Right now it's scheduled to start at 1:30, although that  
15 might be later depending on whether the committee business  
16 rolls over from the morning. That workshop will be on  
17 post-closure maintenance and financial assurance issues.  
18 It will be a several-hour workshop with invited panelists  
19 in open discussion with the public and Committee members.

20 And then, lastly, is Gregory Canyon we anticipate  
21 being on the agenda for December. According to news  
22 reports, the Proposition B failed by a margin of 2 to 1.  
23 So as far as we know, at this point the time on the permit  
24 has been waived such that we would have to have it on the  
25 December agenda.

1           CHAIRPERSON MULÉ:   Okay.

2           DEPUTY DIRECTOR LEVENSON:   So it will be a very  
3 busy December agenda.   There will be other permit items as  
4 well, I'm sure.

5           CHAIRPERSON MULÉ:   Okay.   Thank you.

6           DEPUTY DIRECTOR LEVENSON:   That's the end of my  
7 report.

8           Thank you.

9           CHAIRPERSON MULÉ:   Thank you.

10          Mr. Paparian.

11          COMMITTEE MEMBER PAPARIAN:   Howard, I just wanted  
12 to ask about one thing.

13          Last Friday, I think it was Friday, as you know,  
14 there was an unfortunate death at a landfill involving one  
15 of the workers there.   I don't want to get into any of the  
16 details of that.   But what it brought up in my mind -- I  
17 know we have talked in the past about some OSHA  
18 cross-training for the LEA's to assure that they know if  
19 they should call OSHA and ask them maybe to come and check  
20 out situations at a permitted facility.

21          I think we had some training at the last LEA  
22 conference, as I recall.

23          DEPUTY DIRECTOR LEVENSON:   That's correct Mr.  
24 Paparian.

25          COMMITTEE MEMBER PAPARIAN:   Okay.   Are we going

1 to continue to do that and work with OSHA to assure that  
2 at least our folks know -- what I'm getting at, just so  
3 everybody knows, I'm not getting at our inspectors  
4 becoming OSHA inspectors, but rather knowing just enough  
5 so that if they need to call in an OSHA inspector and  
6 alert them that they may want to take a look at a  
7 facility, they know when's the appropriate time to do  
8 that.

9           DEPUTY DIRECTOR LEVENSON: We on a continuing  
10 basis -- we do have an agreement with -- and it's a  
11 statutorily driven agreement -- with OSHA where LEA's do  
12 referrals over to OSHA when there is an incident like  
13 this. And we have periodic training and more constant or  
14 more frequent reminders of that referral relationship.

15           You know, in general LEA's do go out to the site  
16 to check on any relationship between an incident such as  
17 this and whether there's been some violation of our state  
18 minimum standards that would have led to the incident.  
19 And then they do follow-ups, you know, with OSHA as  
20 needed. And if OSHA finds that there's, you know, a  
21 particular condition that needs no be corrected, then they  
22 work through the LEA to get that corrected as well.

23           We certainly can look at whether we need to have  
24 additional training. I'm not sure how many LEA's do not  
25 have that training currently.



1           Ask Sharon to come --

2           COMMITTEE MEMBER PAPARIAN: I think this is a  
3 reminder that we may want to just, you know, look into  
4 that and assure that, you know, the LEA's are regularly  
5 reminded of when it would be appropriate to let OSHA know  
6 a situation that could be hazardous.

7           LEA SUPPORT SERVICES BRANCH MANAGER ANDERSON:

8           Yeah. And, Mr. Paparian, we're coming on to a  
9 couple of meetings that are real good opportunities to  
10 disseminate the information, once again to remind them to  
11 use the statutory referral.

12           The California Conference Directors of  
13 Environmental Health Solid Waste Policy Committee meeting  
14 is happening next Wednesday, another opportunity to just  
15 sort of put that in their bonnet. And they're listening  
16 right now, so that a good thing. And the Enforcement  
17 Advisory Council meeting is on the 17th. So those are two  
18 very good opportunities to just do that reminder. We have  
19 a continuous opportunity to just remind our local  
20 enforcement agencies to use the statutory referral if they  
21 see conditions that they think would be referable to  
22 CalOSHA. Sometimes you can't see those things, these  
23 things can't be predicted or --

24           COMMITTEE MEMBER PAPARIAN: Right.

25           LEA SUPPORT SERVICES BRANCH MANAGER ANDERSON:

1           -- can't see those conditions.

2           DEPUTY DIRECTOR LEVENSON: I would also add that  
3 we have a series of roundtables coming up January, where  
4 we go around to five venues around the state. And we do  
5 that about quarterly. So that's a topic that we can also  
6 include in the roundtables. And that's with field LEA  
7 staff. So we can continually bring that message to those  
8 roundtables.

9           COMMITTEE MEMBER PAPARIAN: Okay. Thank you.

10          CHAIRPERSON MULÉ: Thank you, Howard.

11          I guess we can then move on to Item B, which is  
12 discussion of and request for direction on a rule-making  
13 plan for development of regulations pursuant to AB 1497.

14          Howard.

15          DEPUTY DIRECTOR LEVENSON: I'm going to turn that  
16 directly over to Mr. Mark de Bie of Permitting and  
17 Enforcement Division to make a presentation on this.

18          (Thereupon an overhead presentation was  
19 Presented as follows.)

20          PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

21          Thank you, Howard. Mark de Bie with it  
22 Permitting & Inspections Branch. And I'm going to run  
23 through a series of slides as an overview to this item.  
24 It contains most of the information in the item. And that  
25 will be staff's presentation relative to this.

1           And as the title indicates, what we're asking the  
2 Committee to do today is to give direction to staff  
3 relative to a proposed plan. We don't anticipate starting  
4 to implement the plan by discussing details of particulars  
5 relative to these issues, but that may play into  
6 determining how the plan is structured. But we wanted to  
7 focus your attention on just giving direction on the plan  
8 and go from there.

9           The reasons why staff feels that we need this  
10 direction is because we have a pretty full plate in front  
11 of us. There were some statutory requirements relative to  
12 the Board doing regulations. The Board has given previous  
13 direction relative to CDI requirements and their  
14 applicability to other facilities.

15           And staff has been sort of adding to a list for  
16 the past few years, ever since the last round of major  
17 permit regulations were developed, on things that could be  
18 done differently, improved upon, areas where there's some  
19 clarification, that's sort of thing.

20           And then also staff conducted some workshops  
21 relative to this plan and collected even more issues. So  
22 We're up to 21 various issues that could potentially be  
23 addressed in the form of rule making.

24           Also an aspect of needing a plan is to be able to  
25 balance all the other division/branch workload and also to

1 take into consideration all the other various initiatives  
2 going on, not just in Permitting and Enforcement but other  
3 areas at the Board that involves stakeholder input. One  
4 of the complaints that staff has heard recently during  
5 some rule makings is we're just doing too many regs all at  
6 once, and it's hard to keep track and go to all the public  
7 meetings and all of that.

8           So a plan sort of laying out how we'll approach  
9 development of the rules I think would be of benefit to  
10 avoid overlap and conflict relative to some of these other  
11 initiatives that are listed here on this slide.

12                               --o0o--

13           PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

14           Relative to the concepts or the issues that we  
15 are looking at, they kind of break out into three main --  
16 or four main areas now, again, those that are mandated by  
17 statute. And those came out of Assembly Bill 1497 that  
18 indicated that the Board should develop regs for  
19 implementing the new public hearing requirement for  
20 revised permits as well as to attempt to define this term  
21 "significant change." And I won't give you the whole term  
22 of "significant change," but it's not just "significant  
23 change," but it's relative to situations at facilities and  
24 whether they're authorized by the permit. It's basically  
25 the trigger on what requires revisions to a permit or not.

1           Again, the Board directed staff to look at some  
2 issues out of the CDI regs that were unique in particular  
3 to CDI to see if they should be and how they should be  
4 applied to other kinds of facilities. And so there were a  
5 number of those to look at under Board direction.

6                               --o0o--

7           PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

8           And then some of the issues that staff identified  
9 with working with stakeholders, either LEA's or industry  
10 or environmental groups on things that should be looked at  
11 to help make the permit process mostly more effective,  
12 more efficient and more consistently applied.

13           One of those areas -- I'll just highlight a  
14 couple of them -- modified permit process. Staff's view  
15 is that kind of goes along with significant change. If  
16 the Board identifies definitive thresholds for what  
17 requires a revised permit, staff's view is that there  
18 should be a process defined in regulation for changing  
19 permits for less than significant changes. Right now the  
20 only way in regulation to change a permit is through the  
21 revision process.

22           So once we know what should go through revisions,  
23 other kinds of permit changes could go through a modified  
24 permit process.

25           Number 13, the RFI and permit application

1 consistency. The Board just approved some regulations  
2 that made changes to the permit application and required  
3 specific information to be identified in filling in the  
4 blank on that application. Staff's view is that  
5 potentially the RFI requirements, the Report of Facility  
6 Information requirements, should be examined to see if it  
7 supports the application. Does the RFI require sort of  
8 supporting data information relative to that information  
9 that's being asked for in the application.

10 One, 14 also I think I'll call out to, is an  
11 example of one of these sort of clarification nuance sorts  
12 of things. It's fairly minor potentially. But right now  
13 we have a regulation that says that the Board's 60-day  
14 clock basically starts when the envelope containing the  
15 proposed permit is opened. Well, staff is receiving more  
16 and more permits via E-mail. And one could argue that,  
17 you know, that's an electronic envelope that's being  
18 opened.

19 But I think we need to clarify just how we deal  
20 with submittal of permits in the new modern electronic  
21 age. And it's key, because depending on when we start  
22 that clock would depend on whether we have, you know, a  
23 month or two months to review and process that permit  
24 because of the 60-day timeframe and the scheduling of the  
25 Board meetings.

1 --o0o--

2 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

3 When staff brought those first 15 issues to the  
4 workshops, there was a request to the participants whether  
5 additional issues or concepts should be added or some  
6 removed. And so at the various workshops both in  
7 Sacramento and Diamond Bar a number of issues were  
8 identified. Some of these are within the permit area and  
9 some are outside of the permit area. So staff has  
10 included these as part of the plan because, again, they  
11 were identified by various stakeholders as being something  
12 that the Board should be looking at and potentially  
13 determining whether or not regulations should be developed  
14 or modified to address some of these issues.

15 --o0o--

16 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

17 So staff has boiled all those 21 issues down into  
18 a plan. And the plan is fairly well outlined starting on  
19 your agenda item on page 5. But it basically sets up  
20 three major rule-making packages, package A, B, and C, and  
21 groups those issues within those three packages.

22 Package A picks up the statutory mandated  
23 requirements, a related CDI requirement. There's a CDI  
24 requirement on public hearings, and so that's been  
25 included because of the statutory requirement to look at

1 public hearings relative to revised permits.

2           The modified permit process again because of  
3 staff's view that that kind of falls in behind the  
4 "significant change" definition, which is a statutory  
5 requirement.

6           And then there's a couple sort of clean-up  
7 issues, clarification issues 9 and 12, that could be --  
8 could be important in discussions relative to significant  
9 change as well as public hearings. Especially 12, when  
10 talking about the solid waste facility permit's  
11 relationship to other kinds of permits. Staff's aware  
12 that there's been some inconsistent application of viewing  
13 the solid waste facility permit, especially with  
14 conditional land-use permits. The regulation indicates  
15 that the applicant should submit the land-use approval as  
16 part of the application package. The LEA's are obligated  
17 to review that package so see if it's complete. Some  
18 LEA's stop there and others go on to determine whether  
19 it's correct. And that leads them into a discussion on  
20 whether or not the permit would be consistent with the  
21 land use.

22           So some do, some don't. There needs to be some  
23 clarification on that.

24           And then the tracking of community outreach  
25 efforts. It kind of goes back to the AB 1497 requirement



1 in that when the Board is considering the public hearing  
2 requirement, they need to take into account the  
3 environmental justice reports from agency and the working  
4 groups.

5           Fifteen conceptually could be just the first step  
6 towards just trying to get better data on what's occurring  
7 out there relative to community outreach and solid waste  
8 facility permit process. So it could be something very  
9 small or quite large. But it does play in, especially  
10 with the public hearing.

11           So those are being grouped into package A, with a  
12 start date at the end this year and then going through to  
13 2006. As you can see on the plan, it does propose an  
14 informal process as well as the formal process. And the  
15 Board has conducted a rule-making utilizing an informal  
16 process and not jumping into the formal process. So the  
17 plan outlines that.

18                               --o0o--

19           PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

20           Package B collects up a number of the remaining  
21 issues, and would start probably in about the middle of  
22 the formal process of package A. So when we're in to  
23 maybe a 15-day comment period for package A we would then  
24 start the informal process for package B.

25                               --o0o--

1 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

2 And then, finally, package C collects up the  
3 remaining issues. And again would be time to start sort  
4 of midway with package B, and then ending finally in the  
5 end of 2007.

6 So it's a multi-year project here to get through  
7 all of these issues.

8 --oOo--

9 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

10 I wanted to highlight that -- and we'll just show  
11 you this last slide, a little graphic on how it flows.  
12 But I wanted to highlight in the item that -- it appears a  
13 couple different places, just before the outline of the  
14 rule making and then also towards the end relative to  
15 those issues in package C -- that staff anticipates that  
16 not all of these issues would actually become part of the  
17 formal rule making; that through the informal process and  
18 the discussions and fine tuning the scope of these issues  
19 and concepts, that a number of them may fall out and be  
20 dealt with through training or guidance or maybe just  
21 policy statements that the Board would make, as opposed to  
22 putting them and implementing them in regulations.

23 So it's a very large list. But then staff  
24 realizes through -- you know, that some of these may just  
25 drop out. And some of the input that we received at

1 workshops indicated that maybe some of those really  
2 aren't, you know, things that should go in reg and that  
3 could be addressed. We wanted to keep them in there at  
4 least in the informal process so we could have those  
5 discussions in-depth, in context too before making that  
6 decision.

7           Certainly it would be staff's proposed approach  
8 that if we drop issues out, we would come back to the  
9 Committee and make the Committee aware of, you know, what  
10 feedback we're getting from the various stakeholders at  
11 workshops relative to issues and seek direction from the  
12 Committee whether or not an issue should drop out or  
13 remain in. I don't think staff would feel comfortable  
14 unilaterally making that decision without coming back to  
15 the Committee on that.

16           So, again, what staff's seeking is some direction  
17 relative to this plan. Staff's recommending that, you  
18 know, you give us direction to implement it as proposed.  
19 But certainly if the Committee wants to move things around  
20 or shift timeframes, we can discuss that with you and make  
21 changes as appropriate.

22           Thank you.

23           CHAIRPERSON MULÉ: Thank you, Mark. That was a  
24 very good summary. I appreciate.

25           Do you have any questions, Mike?

1 COMMITTEE MEMBER PAPARIAN: Let me just ask for  
2 some clarification on one of the items, the surprise  
3 inspections. Aren't LEA's doing that to some extent now?  
4 Or is this one of the ones where you may not necessarily  
5 need regulatory direction?

6 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

7 It may be in that category. Right now the  
8 regulations relative to inspections indicates that LEA's  
9 are authorized to conduct surprise and random inspections.  
10 The term used is they "may do it." So the regulations  
11 authorize LEA's to do it. And through discussions with  
12 LEA's, it's staff's opinion that to the most extent --  
13 mostly it does occur in that fashion, that an effort is  
14 made to not do inspections in such a way that an operator  
15 can anticipate, you know, when the LEA will be there or  
16 not.

17 There are some situations where LEA's need to  
18 give some level of notice to the operator, both from  
19 health and safety issues and for security issues. Now,  
20 some of these sites are at military bases and they just  
21 can't show up at the gate and expect to go right on in.  
22 So some arrangements are made relative to those special  
23 circumstances.

24 I think the reason -- basically this issue comes  
25 out of the CDI regs. And my recollection of the

1 discussion at that time was that the Board was seeking  
2 greater assurance that LEA's would in fact be doing  
3 surprise and random inspections. So they wanted to change  
4 it from just authorizing it to requiring it.

5 COMMITTEE MEMBER PAPARIAN: Okay, yeah. And  
6 that's what -- my recollection was that it was becoming  
7 standard practice. But maybe we might need a little more  
8 information at some point, you know, how many LEA's are  
9 really conducting random inspections at some point during  
10 the year on facilities.

11 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

12 That's a very hard thing to come up with. It  
13 would -- you know, I could give you some anecdotal  
14 information pretty quickly. But, you know, how do you --  
15 how do you determine whether or not someone had notice or  
16 not, you know, unless you're privy to -- you know, you're  
17 tapping phones or something. I don't know how you would  
18 do it.

19 But I know that occasionally staff had gone with  
20 LEA's to inspections. And it seemed to Board staff that  
21 the operator was sort of used to the LEA showing up on a  
22 particular timeframe, you know, day of the week or  
23 something, because of statements made, you know, sort of  
24 offhand by the operator, you know, sort of things like,  
25 "It's Tuesday. I didn't expect you till Thursday." So

1 those sorts of things.

2 (Laughter.)

3 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

4 So, you know, that's the kind of data we have.

5 But, again, when talking with LEA's about this in various

6 venues, you know, the response back is, no, every effort

7 is made to do it in a surprise and random fashion.

8 COMMITTEE MEMBER PAPARIAN: Okay. I know there's

9 some speakers. I might want to come back to this in terms

10 of the timing on that particular one, when to go forward

11 with the regulation.

12 PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

13 Okay.

14 CHAIRPERSON MULÉ: Thank you.

15 I just have a couple quick questions. And then

16 we do have two speakers here.

17 I'm looking at the time line, Howard and Mark.

18 And I have this question. It may sound silly, but I just

19 need to ask it.

20 Based on our statutory requirements, it allows us

21 to develop these regulations over this three -- which

22 would be in effect a three-year time period?

23 DEPUTY DIRECTOR LEVENSON: Well, each package

24 would not take three years. But --

25 CHAIRPERSON MULÉ: No, right.

1           DEPUTY DIRECTOR LEVENSON:  -- once we start the  
2 formal part of any particular package, then we have one  
3 year to complete that.  So, for example, on the first  
4 package, you know, going from roughly the end of this year  
5 through mid-2006, you know, we would probably try to start  
6 the formal package with a 45-day comment period for your  
7 approval in mid-2005.  And that takes us a year, you know,  
8 roughly to 2006.  And each package would be staggered to  
9 do that.

10          CHAIRPERSON MULÉ:  Right.  Okay.

11          PERMITTING & INSPECTIONS BRANCH MANAGER de BIE:

12          And if I may add.  In AB 1497 that did sort of  
13 mandate the Board doing regs, it was silent on, you know,  
14 whether they needed to be done in a year or two years.  
15 Actually it said, you know, given resources, you know, the  
16 Board will be doing this.  So it allowed some flexibility  
17 on when we started it and ended it.

18          And then just to tag on.  The formal process once  
19 it starts with the 45-day notice has one year to run.  If  
20 you fail to adopt the regs at the end of the year, you  
21 just have to start all over again.  So you start with a  
22 knew 45-day comment period and you start building a whole  
23 new file.  We try to get it done within that year so we  
24 don't have to start from ground zero.

25          DEPUTY DIRECTOR LEVENSON:  And I would also like

1 to add that, regardless of whether we move one concept  
2 around or another, but, you know, we've broken this up  
3 partly to make it really practical to do with staff  
4 resources. And, you know, if we tried to put everything  
5 into one package, there's a very good chance we wouldn't  
6 be able to complete that package. So this is a more, you  
7 know, feasible approach from, you know, getting the job  
8 done.

9 CHAIRPERSON MULÉ: Right. And that was exactly  
10 my concern, was that if we were under a certain line that  
11 we had to complete all of this by -- you know, that was a  
12 concern to me. So I guess, again, my question was just,  
13 you know, do we have -- like Mark was saying, the time is  
14 not specified on how long we can take to do these  
15 regulations. Because we do have a lot of work to do here,  
16 and this, as you said, is just one of many items that you  
17 all are working on.

18 So I appreciate that. Thank you.

19 And I just do have a question about number 17,  
20 the Board and LEA role in the CEQA processes. Is that  
21 something that we can look at while we're doing some of  
22 this other stuff? I don't know, Howard, if you want to  
23 address that.

24 Thank you.

25 DEPUTY DIRECTOR LEVENSON: Sure. That came up at



1 the workshops. And so that's one of those issues that  
2 we've included in package C for a couple of reasons. One,  
3 we already have some work going on on CEQA, more on kind  
4 of business practices with an LEA/Waste Board staff -- LEA  
5 partnership Waste Board staff working group. And some  
6 work's being done on that.

7 But the issue of the Board and the LEA role in  
8 CEQA and the Board role in CEQA, it really covers a much  
9 broader spectrum of decision making than just with respect  
10 to solid waste facility permits. It covers everything  
11 that the Board has a discretionary action on, whether it's  
12 tire facility permits or the disbursement of funds, and so  
13 on.

14 And we placed it in package C at this point  
15 thinking that there was ongoing work at probably a smaller  
16 level that we could bring to the Committee. It's  
17 certainly something that, you know, we as staff as a  
18 whole, cutting across all of the divisions that are  
19 affected by this and involving the Legal Office, we could  
20 come back to you with some kind of discussion item or  
21 workshop, if you'd prefer, that lays out these broader  
22 CEQA issues in general and, you know, seek some further  
23 direction from you on where to go.

24 But I would respectfully ask that that not be put  
25 in these particular regulatory packages but be kept as a

1 separate endeavor because it has much broader  
2 implications.

3 CHAIRPERSON MULÉ: Okay. Great.

4 Julie, is that something that we can do?

5 CHIEF DEPUTY DIRECTOR NAUMAN: We can certainly  
6 work cross-divisionally and through the Legal Office.

7 We have done workshops in the past on CEQA. The  
8 focus has tended to be in the permitting process. And,  
9 Mike, I'm looking at you. It was at least a couple of  
10 years ago that we did a fairly extensive overview of the  
11 relationship of CEQA to the permitting process. But as  
12 we've just mentioned here, that's kind of only one piece  
13 of the way the Board gets involved in CEQA.

14 COMMITTEE MEMBER PAPARIAN: Yeah. I mean I think  
15 the timing would be good to, you know, get clear on where  
16 we're at with CEQA and its applicability to the processes,  
17 you know, especially, you know, since -- I don't remember  
18 exactly when that was. But it was a few years back and I  
19 think we've had several new members since then. And, you  
20 know, maybe the sooner, the better. I don't know how soon  
21 we can be prepared at least to have some general overview,  
22 but I think that might be appropriate.

23 DEPUTY DIRECTOR LEVENSON: Well, if we could, you  
24 know, have some time to discuss that with Legal and some  
25 of the other executive staff and get back to you with some

1 kind of proposal.

2 I do recall that we had a full day workshop in  
3 May of 2003 on permitting, inspection and enforcement  
4 aspects related just to permitting. And probably a third  
5 of that day was on CEQA related issues, just within the  
6 permitting aspect. So, you know, that covers certainly a  
7 very important part of the Board's CEQA functions, but by  
8 no stretch all. So we would have to, you know, figure out  
9 how we would come back to you with more information.

10 COMMITTEE MEMBER PAPARIAN: Yeah, and I think  
11 there's -- I think there may be some broader requirements  
12 under CEQA, you know, how we implement CEQA policy-wise  
13 and so forth. So I don't know.

14 The Legal Office will be challenged I think with  
15 this one a little bit. But I think it probably would be a  
16 good time to move forward on some work on this.

17 CHAIRPERSON MULÉ: Great. Thank you, Julie.  
18 Thank you, Mark and Howard.

19 And we do have two speakers.

20 The first speaker is Scott Smithline with  
21 Californians Against Waste.

22 Scott.

23 MR. SMITHLINE: Madam Chair Mulé, Committee  
24 Member Papariané, thank you for the opportunity to address  
25 you this morning. I'm Scott Smithline with Californians

1 Against Waste.

2 I think I'd like to begin with supporting staff  
3 recommendation to tap the phone lines of all the solid  
4 waste facility operators in the State of California.

5 (Laughter.)

6 MR. SMITHLINE: Just kidding.

7 Since we're talking today about the order of  
8 operations essentially, not the substance of these  
9 regulatory packages, I'll focus my comments on the  
10 regulatory issues that are related to the C&D processing  
11 regs because I think there are some time-sensitive issues  
12 associated with those.

13 As you know, Californians Against Waste opposed  
14 the final version of those regulations on the basis that  
15 they were really contrary to some of the goals of the  
16 Waste Board, that they indefensibly were more restrictive  
17 on C&D facilities than they were on MSW facilities. And,  
18 most importantly, that we were really afraid that they  
19 were going to restrict C&D facilities at a time when we  
20 really needed to be expanding C&D facilities in the state.

21 I want to actually just take a step back and  
22 thank the staff for the workshop that they on last, I  
23 guess, month. That was -- I think that was very  
24 informative and I think Mr. de Bie did an excellent job.  
25 There's a lot of very important issues that we're talking

1 about here. And some of them are very complex, and that  
2 was a very helpful workshop.

3 In general we support these regulatory -- this  
4 plan for these three packages, with a few exceptions.

5 So at that workshop a couple of things that  
6 happened was the staff addressed a couple of the C&D  
7 issues and, you know, expressed that we're going to be  
8 applying some of those new requirements to other  
9 facilities -- solid waste facilities.

10 The second thing they talked about was possibly  
11 modifying those requirements before they were applied to  
12 the other facilities, essentially softening some of those  
13 requirements. For example, the three strikes requirement,  
14 instead of having an automatic bump up to the next tier,  
15 after three strikes you would have a review of your  
16 permit. With respect to the fire prevention plans,  
17 instead of requiring that the fire authority approve your  
18 plan, it's just that you have to have evidence of having  
19 submitted it to the fire authority.

20 These might be good changes for these. But it  
21 creates a scenario where C&D facilities, which essentially  
22 have a more inert waste stream and have a lower risk to  
23 the environment, are operating currently under a more  
24 restrictive version of these requirements that will ever  
25 even be planned to be applied to solid waste facilities.

1           We don't know of any policy -- any reasonable  
2 policy, anyways, justification for that. We think that  
3 those items should be moved up in the package and cleared  
4 up in advance.

5           The other issue that I want to just briefly touch  
6 on is the issue of tiers. We think that as the staff  
7 comes back to the Board with more information on the  
8 affects of the C&D regulations in the State, there needs  
9 to be a mechanism in this process to allow the tier  
10 threshold to be readdressed, as well as some of these  
11 other CDI requirements. And I'm not sure exactly what  
12 that mechanism would be or where it would fall in terms of  
13 the packages. But I really don't think we can afford to  
14 lose a single C&D recycler in the state. So if we get  
15 information that shows that these regulations are having  
16 that effect, somehow I think we should make a provision in  
17 this process to be able to address that issue.

18           Thank you.

19           CHAIRPERSON MULÉ: Thank you, Scott.

20           I think Board Member Paparian has a question.

21           COMMITTEE MEMBER PAPARIAN: Yeah, I wondered if  
22 the staff wants to respond to those issues. I guess the  
23 first one is how do we assure, you know, both consistency  
24 in the types of facilities and how they're regulated and  
25 how do we assure some fairness to the C&D facilities if

1 we're reasonably certain, you know, a requirement's going  
2 to come on in a year or two or three that might be less  
3 restrictive than what they're operating under today.

4 DEPUTY DIRECTOR LEVENSON: A couple things I'd  
5 like to comment on. And Mark I think will add in a few  
6 things.

7 First of all, the CDI -- C&D requirements that  
8 are included in this package, there are four in  
9 particular: The inspection issue that you already spoke  
10 to, Mr. Paparian; the three-strikes issue, fire plans, and  
11 scales.

12 The package at this point does not include tier  
13 thresholds, the 40-percent requirement for the  
14 registration tier, nor the residuals requirements. And  
15 I'll come back to that in a second.

16 For the scales issue, we have kept that out of  
17 this regulatory plan it is currently included in the  
18 proposed disposal reporting system regulations. And it  
19 would be clarified one way or the other in that regulation  
20 as to its applicability to all kinds of facilities.

21 The fire plan, we have proposed that in package C  
22 because we are undertaking another effort which we'll be  
23 discussing with the Solid Waste Policy Committee of the  
24 Environmental Health Directors next week, whenever that  
25 meeting is that Sharon spoke of; to look at fire issues

1 around the state at a variety of different facilities,  
2 what kinds of conditions might be contributing to those  
3 fires, what is the role of local fire districts in those  
4 fire plans. Probably try and get the State Fire Marshal  
5 involved and see whether there are trainings or specific  
6 standards regarding configurations of piles or operating  
7 conditions that we can build into the regs. But that's  
8 going to be an effort that's going to take a little while  
9 before we get any specificity out of that. So that's why  
10 we are proposing to have the fire plan come later.

11 With respect to the three-strikes issue and the  
12 statements that were made at the workshop. I think it  
13 should be taken at this point is that there are many ways  
14 to look at those provisions. And as you move towards  
15 applying them to other facilities, there may be specific  
16 conditions of those particular facilities, that may mean  
17 that the provisions may need to be modified somewhat. But  
18 we're not at that point in proposing a softening or  
19 strengthening. These would be things that have to be  
20 discussed in the informal workshops and brought back.

21 Certainly if there was a decision to move -- a  
22 decision by the Board to move in one direction on any of  
23 those particular provisions, then we would have to look at  
24 it in terms of back applicability or -- you know,  
25 re-examine the CDI regs for a consistency issue as well.



1 COMMITTEE MEMBER PAPARIAN: Would you be doing  
2 that anyway? I mean as you're making -- as we're going  
3 through all these -- let's assume we're going through  
4 these on the time line you have, and some of them come out  
5 of the CDI, but you -- you know, the decision is made to  
6 handle it a little bit different than CDI. Would CDI regs  
7 be amended simultaneously to assure consistency?

8 DEPUTY DIRECTOR LEVENSON: We can certainly  
9 discuss that as, you know, we move forward and see what --  
10 if there's any general consensus on these issues or at  
11 least what the various -- the range of options is. I  
12 mentioned the other suite of C&D related provisions and --  
13 as you know, we have a working group -- staff working  
14 group that's been conducting a survey of a variety of  
15 stakeholders to look at broad barriers to C&D recycling,  
16 whether they be market or local program or regulatory  
17 barriers.

18 And we hope to bring that back to the  
19 Sustainability Committee next month, if we can get it  
20 done, with at least the broad results of that survey and  
21 indicators as to where, you know, the stakeholders think  
22 some of the problems are with -- and then there are some  
23 suggestions for further directions. Those may involve  
24 more workshops on, you know, regulatory issues specific to  
25 C&D or it could be on ordinances or --

1 COMMITTEE MEMBER PAPARIAN: Okay. So you may be  
2 coming back to the C&D by itself with some suggestions  
3 based on that.

4 DEPUTY DIRECTOR LEVENSON: Particularly with --  
5 you know, with the requirements related to tier thresholds  
6 and the 40-percent requirement and the residuals, those  
7 are very specific to C&D. Whereas the fire plans and  
8 three strikes and inspections have more general  
9 applicability at least conceptually.

10 COMMITTEE MEMBER PAPARIAN: Okay. So let me get  
11 back to what I was suggesting and I think what Mr.  
12 Smithline was suggesting.

13 The reason we're here today talking about this to  
14 begin with is the desirability to have some consistency  
15 amongst the regulatory processes that we have. Okay?

16 So what Mr. Smithline was suggesting was with  
17 some of these things, if we adopt them and there's a  
18 difference between how you're regulating the transfer  
19 stations or other facilities and the C&D, you've missed  
20 that fundamental purpose of all this, which was to bring  
21 some consistency in how we do things.

22 So as we're going through -- I think, you know,  
23 at a minimum as we're going through this, if we come up  
24 with a different way of doing things in any of these  
25 areas, it would seem to me we would have -- we would need

1 to modify the C&D simultaneously in that regulatory  
2 package. And if it was so obvious that we were going to  
3 do something in a year or two in any of these areas, we  
4 may want to move up -- as a matter of fairness to the C&D  
5 facilities, move up that regulation or process to assure  
6 that the C&D facilities, you know, aren't facing a burden  
7 that -- you know, that they're going to be out of  
8 obviously in some period of time.

9 DEPUTY DIRECTOR LEVENSON: You know, other than  
10 having the inspection issue in package B, which could be  
11 moved, I don't see that that's a problem. As we identify  
12 directions to move on those provisions, if they are  
13 different than what's in the current C&D regs, we could  
14 flag that and seek your direction on whether to make that  
15 kind of concurrent change in the appropriate C&D  
16 provisions.

17 COMMITTEE MEMBER PAPARIAN: Okay. Mr. Smithline,  
18 does that address what you were bringing up?

19 MR. SMITHLINE: It does directly. The general  
20 gist of it is that we need to be doing everything we can  
21 to support C&D facilities. To the extent that they're  
22 operating under requirements that are more strict now than  
23 for other facilities and that are more strict than those  
24 other facilities may ever face, that doesn't seem to be  
25 the most supportive thing for C&D facilities at a time

1 when we really need these C&D facilities. That's the  
2 bottom line.

3 CHAIRPERSON MULÉ: All right. Thank you.

4 Our next speaker is Sean Edgar with CRRC.

5 MR. EDGAR: Good morning, Madam Chair and  
6 Committee Member Paparian. Sean Edgar on behalf of the  
7 California Refuse Removal Council.

8 Just briefly, we're in support of Option No. 1,  
9 your staff recommendation, to move this package forward.  
10 We're looking forward to participating in the informal  
11 process and then the formal process that your staff  
12 described. In particular, we're very interested to move  
13 forward the item on AB 1497, rolling out the public  
14 hearings. And we believe that an expeditious conclusion  
15 to this segment of the process will provide more  
16 certainty.

17 So thank you for staff's work. And we attended  
18 the workshop. And thank you for discussing this item this  
19 morning, and hope you'll move forward with Option 1.

20 CHAIRPERSON MULÉ: Thank you, Sean.

21 Any other speakers?

22 I guess not.

23 So, Mike, what's your pleasure?

24 COMMITTEE MEMBER PAPARIAN: I'm comfortable  
25 moving forward with the staff direction with, you know,

1 the discussion we just had about, you know, trying to  
2 assure consistency as we're moving forward with the  
3 regulations.

4 The one thing that -- I would like to move up the  
5 random inspections. I think that's an enforcement related  
6 item, that we have language in the CDI regulations  
7 already. That would be presumably the starting point to  
8 lift that and put it into the package A proposal.

9 CHAIRPERSON MULÉ: That's fine with me.

10 Howard, does that work for you?

11 DEPUTY DIRECTOR LEVENSON: That's fine.

12 CHAIRPERSON MULÉ: Okay. And then with the other  
13 item that we mentioned earlier to have a workshop on the  
14 broader issue of the Board and LEA role in the CEQA  
15 process.

16 So with that I think we've -- you've got your  
17 direction. And thank you for all of your hard work. Mike  
18 and I both attended the one public workshop held up here  
19 in Sacramento. And, Mark, you did a fabulous job of  
20 laying it all out. And I want to thank everybody for  
21 their input at that workshop. It was very good.

22 With that -- I don't know if there's any other  
23 public comments, but I do have an announcement to make.

24 Jeannine Bakulich, who is currently my executive  
25 assistant, will be moving in the Administration Division

1   sometime within the next month.  She's going to be working  
2   under Tom Estes in the then Grant Section, which is going  
3   to be a wonderful opportunity for her.  I think I'm just  
4   as excited as she is, although I am going to miss her  
5   terribly.  She's been absolutely wonderful.  I could not  
6   have gotten adjusted here at the Board without her help  
7   and assistance.  And I'm sure all of you can share with me  
8   your appreciation for all that she's done for us at the  
9   Board level over the past -- seven years, is it?

10           SECRETARY BAKULICH:  Yes.

11           CHAIRPERSON MULÉ:  -- seven years.

12           So with that, I just want to thank you publicly  
13   for all of your assistance and help with the Board.

14           And also Fernando Berton was on loan to us as a  
15   committee analyst.  And Fernando's going to be going back  
16   to the Organics Section where we need him to work on  
17   organics and other related issues, correct?

18           So Fernando will be going back to Organics  
19   mid-November.  And so, again, I want to thank you for all  
20   of your help over the past five or six months.  Couldn't  
21   have done it without you.  And I just want to let you know  
22   how much I appreciate all your work and help.  And I'll  
23   still be calling on you.

24           (Laughter.)

25           CHAIRPERSON MULÉ:  With that --

1           COMMITTEE MEMBER PAPARIAN: Okay. I'll just add  
2 my congratulations to Jeannine too. I think that's a  
3 great opportunity.

4           Jeannine, you also helped me quite a bit when I  
5 first got appointed to the Board, as you recall, in  
6 sorting out how this place worked and how -- you know, you  
7 helped me get my feet on the ground very quickly.

8           And it's a wonderful opportunity.  
9 Congratulations.

10          SECRETARY BAKULICH: Thank you.

11          CHAIRPERSON MULÉ: Well, with that, if there's no  
12 further comment, this meeting is adjourned.

13          Thank you all.

14          (Thereupon the California Integrated Waste  
15 Management Board, Permitting and Enforcement  
16 Committee meeting adjourned at 10:50 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
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8 in shorthand by me, James F. Peters, a Certified Shorthand  
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11 I further certify that I am not of counsel or  
12 attorney for any of the parties to said meeting nor in any  
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand  
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